Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

October Term, 1979

NO. 79-2019

ROBERT E. KELLER, individually and as District Attorney for the Clayton Judicial Circuit, State of Georgia,

Petitioner,

v.

SEPTUM, INC., A Georgia Corporation,

Respondent.

OPPOSITION TO WRIT OF CERTIORARI

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Counsel for Respondent

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Respondent respectfully prays that this Court deny a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit, entered in the above case on March 24, 1980.

Reasons for Denying the Writ

The Court below correctly interpreted *Steffel v. Thompson*, 415 U.S. 452, 94 S.Ct. 1209, 39 L.Ed.2d 505 (1974). The distinctions which the Petitioner attempts to draw between the case at bar and *Steffel v. Thompson*, *supra*, are legally insufficient.

This Court has set out in Rule 19 the considerations governing review on certiorari. After pointing out that a

review on writ of certiorari is not a matter of right, but of sound judicial discretion, the Rule states that certiorari will be granted only where there are "special and important reasons" to do so. The types of reasons are specifically outlined as follows:

(1) A decision of a Court of Appeals which is in conflict with a decision of another Court of Appeals on the same matter,

(2) A decision by a Court of Appeals which has decided an important State or territorial question in a way in conflict with applicable State or territorial law,

(3) A decision from a Court of Appeals on an important question of Federal law which has not been, but should be, settled by this Court,

(4) A decision by a Court of Appeals which decided a Federal question in a way in conflict with applicable decisions of this Court, and

(5) A decision by a Court of Appeals which has so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision.

Although the foregoing reasons are not intended to be exhaustive, they do indicate the type of reasons which must prevail before certiorari should be granted.

A testing of the case at bar by the foregoing reasons shows that none of them are applicable. Moreover, the types of reasons set forth in Rule 19 are of a vastly different and more important nature than any reasons which have been submitted by Petitioner.

Essentially, Petitioner wishes this Court to grant a writ of certiorari to insulate Petitioner from a determination of a Federal constitutional question by a Federal District Court. There is absolutely no basis whatsoever for granting a writ of certiorari in this case.

Conclusion

For the reasons set forth above, it is respectfully submitted that the petition for a writ of certiorari should be denied.

Respectfully submitted,

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Attorney for Respondent

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CERTIFICATE OF SERVICE

I, Foy R. Devine, Respondent's attorney, hereby certify that I have mailed a copy of the foregoing Opposition to Writ of Certiorari to Harold G. Benefield and Clifford A. Sticher, District Attorney's Office, Clayton County Courthouse, Jonesboro, Georgia, 30236, by placing a copy of same along with Certificate attached thereto in a properly addressed and stamped envelope and mailed on the 25th day of September, 1980, and I did also mail a copy of same to the Honorable Arthur K. Bolton, Attorney General, State of Georgia, 321 Judicial Building, Atlanta, Georgia.

FOY R. DEVINE
Attorney for Respondent